

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Federal State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Low Volume Long Distance Users)	CC Docket No. 99-249
)	
Access Charge Reform)	CC Docket No. 96-262

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its comments in response to the Commission's December 4, 2001 *Public Notice* seeking comment on the \$650 million of annual support that was established as a partial replacement for implicit universal service support that previously was collected through interstate access charges.¹

The scope of this proceeding is quite narrow. The D.C. Circuit upheld most aspects of the Commission's *CALLS Order* on review,² although it did remand the specific issue of the \$650 million amount of support for further analysis and explanation. In so doing, the court recognized that identifying a specific amount is an "imprecise exercise" and that its review of the

¹ *Public Notice*, Common Carrier Bureau Seeks Comment on Remand of \$650 Million Support Amount Under Interstate Access Support Mechanism for Price Cap Carriers, DA-2817 (rel. Dec. 4, 2001).

² See *Access Charge Reform et al.*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249 and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*), aff'd in part, rev'd in part and remanded in part sub nom. *Texas Office of Pub. Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001) (*TOPUC*).

amount of support is “especially deferential due to its transitional nature.”³ The court also held that the Commission was not required to respond to the Texas Office of Public Utility Counsel (TOPUC) cost study, which purported to show that no support should be provided.⁴

The \$650 million amount of support established by the Commission is a reasonable transition mechanism to partially replace implicit universal service support eliminated from interstate access charges. First, the temporary fund will be in effect for only five years and does not represent the Commission’s attempt to implement a comprehensive and permanent solution to the problem of implicit subsidies.⁵ In the *CALLS Order*, the Commission acknowledged the difficulty of identifying the amount of implicit universal service support in interstate access charges.⁶ The problem is that there are various sources of implicit support (*e.g.*, business to residential, high-volume to low-volume, geographic rate averaging) that “are not easily severable and quantifiable.”⁷ In addition, the Commission noted that competitive pricing pressures – which are rapidly eroding implicit support – make it even more difficult to identify a specific amount of implicit support.⁸ The Commission must establish sufficient explicit support mechanisms to replace the implicit support that is being lost to competition and bypass. These

³ *TOPUC*, 265 F.3d at 328.

⁴ *Id.* at 328 n.7. TOPUC and others had argued that the Commission should not have provided any universal service support to replace implicit support collected through interstate access charges.

⁵ *CALLS Order* at ¶ 201. SBC notes that more than 18 months already have elapsed since the CALLS plan took effect.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

factors all support giving the Commission significant discretion to implement a temporary mechanism that reduces the current reliance on implicit support.

SBC also notes that the \$650 million of support is just a partial solution to the broader problem of implicit subsidies that must be addressed by the Commission. In light of the inherent difficulties associated with attempting to identify implicit support with precision, SBC has urged the Commission to address implicit subsidies and universal service support reform at both the federal and state level as part of the pending *Intercarrier Compensation* proceeding. This broader action on the part of the Commission is required to comply with the Tenth Circuit's remand in *Qwest v. FCC*.⁹ In that case, the court reviewed the Commission's *Ninth Universal Service Order* in the universal service proceeding and concluded that the Commission had not explained how the current amount of universal service funding is sufficient.¹⁰ On remand, the Commission is required to "develop mechanisms to induce adequate state action" to implement the statutory goals of universal service and to "explain further its complete plan for supporting universal service."¹¹ Thus, the \$650 million fund is just the first step in the process of transitioning from implicit universal service support to explicit support.

Second, in addition to the cost studies that were filed, the incumbent local exchange carriers' (LECs') actual recovery of common line costs since the adoption of the *CALLS Order* demonstrates that the \$650 million amount is not excessive. The purpose of the \$650 million is to provide support for a *portion* of the difference between an incumbent LEC's actual common line revenue requirement and the incumbent LEC's permitted common line end user recovery,

⁹ *Qwest v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

¹⁰ *Id.* at 1195.

¹¹ *Id.* at 1204-05.

which is limited by the Subscriber Line Charge (SLC) caps.¹² In most cases, this amount of support does not allow incumbent LECs to recover all of their common line costs from end users. Not only do many incumbent LECs continue to recover common line costs through the Presubscribed Interexchange Carrier Charge and the Carrier Common Line Charge, but most incumbent LECs also have not been able to deaverage their SLCs as envisioned in the *CALLS Order*. In other words, significant implicit subsidies remain in the interstate access charge system even with the \$650 million of support.

For these reasons, the Commission should reaffirm its prior decision to provide \$650 million of annual support to partially replace implicit universal service support that previously was collected through interstate access charges.

Respectfully Submitted,

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January 22, 2002

¹² *CALLS Order* at ¶ 196.